

The Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON,

Plaintiff,

v.

ALDERWOOD SURGICAL CENTER, LLC,
a Washington limited liability company;
NORTHWEST NASAL SINUS CENTER,
P.S., a Washington professional service
corporation, and JAVAD A. SAJAN, M.D.,

Defendants.

NO. 2:22-cv-01835-RSM

STIPULATED MOTION FOR
ORDER RE PRODUCTION OF
CIVIL INVESTIGATIVE DEMAND
RESPONSE MATERIALS

NOTE ON MOTION CALENDAR:
June 14, 2023

Pursuant to LCR 7(d)(1), the undersigned parties respectfully request an order authorizing Plaintiff State of Washington to produce to Defendants certain documents and information the State received in response to Civil Investigative Demands served on third parties pursuant to Wash. Rev. Code § 19.86.110 during its pre-litigation investigation of Defendants in this matter.

I. BACKGROUND

As part of its pre-litigation investigation, the State served Civil Investigative Demands (CIDs) on a number of third-parties, as well as on Defendants. The State received written materials and/or deposition testimony from eleven (11) third parties in response to these CIDs. Defendants have now served discovery requests on the State seeking production of these third-party CID responses.

Pursuant to Wash. Rev. Code § 19.86.110(7), the State has sought consent from each of these third parties to produce their CID responses to Defendants in discovery. While most of the third parties consented, and the State has begun production of their CID responses, two of them declined to consent and one other has not responded. *See* Declaration of Matthew Geyman in Support of Stipulated Motion for Order re Production of Civil Investigative Demand Response Materials (June 14, 2023) (Geyman Decl.), ¶¶ 7-10.

Under Wash. Rev. Code § 19.86.110(7), the State is barred from broadly disclosing third-party CID responses in discovery absent consent of the responding party or court order. *See* Wash. Rev. Code § 19.86.110(7)(a)-(c). While Defendants disagree with the State’s position that it may not produce investigation materials it gathered from third parties pursuant to its CID authority to the target of the investigation without the third parties’ consent after the State has filed suit, in the spirit of cooperation and efficiency, Defendants have agreed to the State’s proposal to file a stipulated motion to authorize the State to produce the materials at issue in this motion. *See* Geyman Decl., ¶ 11. The parties therefore submit this stipulated motion for an order authorizing the State to produce to Defendants in discovery all of the CID response materials and information the State received from third parties during its investigation.

II. ARGUMENT

Wash. Rev. Code § 19.86.110(7) provides that materials provided in response to CIDs shall not “unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed . . . without the consent of the person who produced such material, answered written interrogatories, or gave oral testimony, except as otherwise provided in this section.” While the Attorney General may “use” CID responses “as he or she determines necessary in the enforcement of this chapter, including presentation before any court,” Wash. Rev. Code § 19.86.110(7)(c), the State does not intend to “use” all of these CID response materials. In an abundance of caution, therefore, the State

1 requests an order from this Court authorizing the State to produce to Defendants the full scope
2 of these third-party CID responses in discovery.

3 In the absence of such order, the State could be faced with potentially violating
4 Wash. Rev. Code § 19.86.110(7) by complying with its discovery obligations under
5 Fed. R. Civ. P. 26, or else risk sanctions if it does not provide the requested discovery.
6 *See* Fed. R. Civ. P. 37. The State would not be in possession of these CID responses were it not
7 for its pre-litigation investigation of Defendants, and it has made a good faith effort to obtain
8 consent from these CID recipients to produce their CID responses prior to this filing. The State
9 has thus shown good cause for an order authorizing the State to produce these third-party CID
10 responses to Defendants in discovery in this action.

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III. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court issue an order pursuant to Wash. Rev. Code § 19.86.110(7) authorizing the State to produce these third-party CID responses to Defendants in discovery.

DATED this 14th day of June, 2023.

<p>ROBERT W. FERGUSON Attorney General</p> <p><i>s/ Matthew Geyman</i> MATTHEW GEYMAN, WSBA #17544 CAMILLE M. MCDORMAN, WSBA #53036 ZORBA LESLIE, WSBA #58523 Assistant Attorneys General Attorneys for Plaintiff State of Washington Consumer Protection Division Office of the Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104</p>	<p>Attorneys for Defendants</p> <p><i>s/ Matthew Halldorson</i> ERON Z. CANNON, WSBA #42076 JESSE C. WILLIAMS, WSBA #35543 MATTHEW C. HALLDORSON, WSBA #51850 KRISTEN E. LANGE, WSBA #54335 Fain Anderson VanDerhoef Rosendahl O'Halloran Spillane PLLC 701 Fifth Avenue, Suite 4750 Seattle, WA 98104</p> <p>JAMES SANDERS, WSBA #24565 TIFFANY L. LEE, WSBA #51979 CARA WALLACE, WSBA #50111 Perkins Coie LLP 1201 Third Avenue, Suite 4900 Seattle, WA 98101</p>
<p><i>I certify that this memorandum contains 640 words, in compliance with the Local Civil Rules</i></p>	

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing to be served on all counsel of record via the ECF system.

I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 14th day of June, 2023, at Seattle, Washington.

s/ Matthew Geyman

MATTHEW GEYMAN, WSBA #17544
Assistant Attorney General